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Chairman

N°14/2019

Paris, 15 March 2019

Mrs Lloyd
IFRS Interpretations Committee Chair
7 Westferry Circus, Canary Wharf
London, UK, E14 4HD

IFRS-IC Request

Dear Mrs Lloyd, Dear Sue,

I am writing on behalf of the Autorité des Normes Comptables (ANC) to submit the accompanying request raised by our stakeholders regarding IFRIC 23. The issue and the two views expressed have been discussed in our dedicated Forum of Application of IFRS (FANCI), IFRS Committee and Board and we concluded that the issue would deserve a consultation of the IFRS Interpretation Committee. Since the question relates to the first time application of IFRIC 23, we hope that it can be timely addressed by the Committee before entities issue their interim financial statements as of 30 June 2019.

In that regard, we stay to our disposal for answering any question on that request. Please do not hesitate to contact us.

Yours sincerely,

Patrick de Cambourg

Patrick de Cambourg

Request to the IFRS-IC regarding the Presentation of an uncertain tax position

1 Analysis of the issue

1.1 Context of the request

1 IFRIC 23 was developed to provide guidance as to the application of IAS 12 when an entity is in a position of uncertainty about the tax treatment that will be accepted by the taxation authority.

2 IFRIC 23.4 states that the purpose of the Interpretation is to clarify the recognition and measurement of items in such circumstances. Presentation is scoped out of the interpretation. The Committee explained in comments to the IFRIC 23 draft that it considers that the requirements of IAS 1 are sufficient.

3 However, there is a debate on the presentation of uncertain tax:

- Some consider that uncertain tax position should be presented as current or deferred tax (View 1 below);
- Others consider that IFRIC 23 does not lead to change the current presentation of uncertain tax position (View 2 below).

1.2 View 1: uncertain tax positions should be presented as current or deferred tax according to IAS 1.54(n) and (o)

4 IFRIC 23 clarifies how to apply the recognition and measurement requirements in IAS 12 when there is uncertainty over income tax treatments. This Interpretation clarifies how to apply the recognition and measurement requirements in IAS 12 when there is uncertainty over income tax treatments. In such a circumstance, an entity shall recognise and measure its current or deferred tax asset or liability applying the requirements in IAS 12 based on taxable profit (tax loss), tax bases, unused tax losses, unused tax credits and tax rates determined applying this Interpretation (IFRIC 23.4).

5 IFRIC 23 does not address the presentation of uncertain tax positions since there is no need for adding presentation provisions that are clear enough under IAS 1 [IAS 1.54 (n) and (o)].

6 IAS 1 requires to present separately in the balance sheet liabilities and assets for deferred tax and for current tax "as defined in IAS 12". IAS 1 does not prevent from disaggregating further these positions when useful. Since uncertain tax positions are from now on considered to fall under the IAS 12 definition, they should be presented in those dedicated line items and may not be presented elsewhere.

7 IFRIC 23.IE 6 and IFRIC 23.IE 10 confirm that the effect of the tax uncertainty is reflected into the deferred or current tax balance, and not separately.

8 The level of uncertainty in the timing and/or amount of a tax asset or liability being current or deferred is not conducive to its presentation in the statement of financial position. In this respect, whereas preparers in certain jurisdictions used to record certain provisions for tax risks within a caption "provisions", the same preparers were not isolating, and rightly so, the uncertain deferred tax assets (sometimes quite uncertain when they reflect unused tax losses). Applying the provisions of IAS 1.54 (n) and (o) is unambiguous as it relates to both assets and liabilities, current or deferred, uncertain or not.

9 IAS 37 clearly scopes out all assets and liabilities under the scope of IAS 12 (IAS 37.5 (b). Consequently, the presentation of tax liabilities under “provisions” is not in compliance with IFRS.

10 In conclusion, IFRIC 23 is clear in its wording and such wording is reinforced by the two illustrative examples. Entities should take the opportunity to reclassify all amounts into relevant current or deferred tax lines when adopting IFRIC 23.

1.3 View 2: IFRIC 23 does not lead to change the current presentation of uncertain tax positions

<u>Analysis of current requirements on presentation</u>

IFRIC 23

11 The original source of the proposed amendments was a question about the recognition of an « uncertain » tax asset. Moreover, the IFRS-IC had already noted diversity in practice in respect of measurement approaches in such circumstance, such as, for example, the use of weighted averages or best estimates, the unit of account, etc. These are the issues that the Committee intended to resolve through this Interpretation. There appears to have been no discussion about the presentation of uncertain tax positions on the balance sheet and no questioning of current practices.

12 Since the Interpretation does not deal with the presentation in the statement of financial position, any parts of the examples which show the presentation of relevant items cannot be considered authoritative. These are simply a schematic illustration of the counterpart to the entries made to the profit and loss account to reflect the estimated impact on the current and deferred tax charges generated by the uncertain tax position. Examples of this sort cannot be interpreted to represent the sole reading possible of an issue of presentation which is not dealt with by this Interpretation.

13 Since IFRIC 23 does not deal with the issue of the presentation of tax assets or tax liabilities, the principles of presentation remain those of IAS 12 and IAS 1.

Presentation requirements of IAS 12

14 The only guidance in IAS 12 relating to the presentation on the balance sheet of tax assets and tax liabilities is contained in paragraphs 71 to 76. This guidance only deals with the rules for offsetting tax assets and liabilities.

15 IFRIC 23 does not modify the requirements of IAS 12 in respect of the balance sheet presentation of tax assets and liabilities. In addition, IAS 12 does not provide any guidance for the balance sheet presentation of uncertain tax positions.

Presentation requirements of IAS 1

16 IAS 1.54 requires the presentation of line items for the amounts of “liabilities and assets for current tax” and “deferred tax liabilities and deferred tax assets”.

17 IAS 1.57 specifies that the “standard does not prescribe the order or format in which an entity presents items. Paragraph 54 simply lists items that are sufficiently different in nature or function to warrant separate presentation”. It also states that the descriptions, the ordering AND the aggregation of items can be amended to provide information that is relevant to the understanding of the entity’s financial position.

18 IAS 1.58 lists the characteristics that could lead an entity to judge that items should be presented separately. These include, notably, “the timing of liabilities”.

19 IAS 1.29 requires an entity to separate items of a dissimilar nature or function. These principles of aggregation (or disaggregation) are also reinforced in the project that the IASB is currently developing on the presentation of financial statements. In that

project the principles of aggregation and disaggregation are notably based on the sharing of common characteristics by different items.

20 In a similar vein, although IAS 37.5(b) excludes from its scope provisions for income taxes addressed by IAS 12, it also excludes provisions for employee benefits addressed by IAS 19. Nonetheless, the presentation of the latter in a line item "provisions" in the balance sheet is a widespread practice that has never been the cause of contention. The line "provisions" already aggregates elements which share the characteristic of having a high degree of uncertainty and requiring the exercise of judgement. The detail of the nature of the items included in this caption is laid out in the notes.

21 Furthermore, IAS 37 is a standard which prescribes the measurement and recognition criteria for provisions which are not dealt with by another, more specific, standard, but, in common with IAS 12, it does not deal with the balance sheet presentation of the items it deals with.

Principles of presentation

22 In reflecting on the application of the principles of IAS 1, and in the light of the current discussions of the IASB on the presentation of financial statements, it appears that:

- it could be more relevant and understandable (and thus consistent with IAS 1), to separate the liabilities related to uncertain tax positions from other current and deferred tax liabilities the amounts and timing of which are much more certain. Indeed, even though both are within the scope of IAS 12 for measurement and recognition purposes, the uncertain tax positions seem to be of a different nature from that of tax liabilities *per se* (whether current or deferred).
- in practice, when entities apply IFRIC 23 they start by determining the amount of the current tax liability in line with those elements declared in the tax computation. This amount will correspond to the amount of tax due in the tax return, and both the amount and the timing are certain. Deferred tax amounts are arrived at by a process which is also derived from the amounts declared in the tax return. In contrast, the measurement of uncertain tax positions is often the result of a distinct calculation and management process. Even though the measurement method respects the requirements of IFRIC 23, the liability is distinct since its amount and timing are far less certain than the current and deferred taxes. It would therefore not be relevant to present such elements in aggregation with current and deferred tax liabilities, for which the user would expect a high level of certainty as to the outcome. It could therefore be appropriate to present elements with this higher level of uncertainty in a balance sheet caption which is distinguished notably by its characteristic of uncertainty, i.e. amongst the provisions.
- IAS 12 allows for offsetting deferred tax assets and liabilities. Information on uncertain tax positions.may be obscured.

Other possible risks related to the presentation

23 Some stakeholders have reported that presenting uncertain tax positions among tax liabilities rather than provisions may create tax risk. To include such elements in the tax captions would confer upon the position taken the appearance of a voluntary and certain act which could be assimilated to a deliberate act of fiscal evasion. Under some countries domestic tax laws (e.g. France), deliberate act of fiscal evasion may result in specific penalties and criminal prosecution.

Summary of view 2

24 Since the obligations related to uncertain tax positions may have more characteristics in common with other provisions than tax liabilities, it could be more informative for the user to include them in a "provisions" line item caption for which the user would expect a high level of uncertainty. The detailed analysis of the "provisions" caption would be disclosed in the notes, where the various types of provisions are split based on further characteristics if material.

25 In accordance with the requirements of IAS 1 (the only standard dealing with the presentation of income tax in the balance sheet), nothing precludes the presentation of uncertain tax positions amongst other provisions, which share the same characteristic of uncertainty as to amount and timing.

26 The publication of IFRIC 23 is insufficient on its own to justify a change in the balance sheet presentation of provisions for uncertain tax positions.

2 Question to the Committee

27 Does IFRIC 23 lead to promote a presentation of uncertain tax positions in the balance sheet?

3 Appendix: extracts from IFRS guidance

28 IFRIC 23.4: This Interpretation clarifies how to apply the recognition and measurement requirements in IAS 12 when there is uncertainty over income tax treatments. In such a circumstance, an entity shall recognise and measure its current or deferred tax asset or liability applying the requirements in IAS 12 based on taxable profit (tax loss), tax bases, unused tax losses, unused tax credits and tax rates determined applying this Interpretation.

29 IFRIC 23.IE 6: Accordingly, Entity A recognises and measures its current tax liability applying IAS 12 based on taxable profit that includes CU 650 to reflect the effect of the uncertainty. The amount of CU 650 is in addition to the amount of taxable profit reported in its income tax filing.

30 IFRIC 23.IE 10: Similarly, as required by paragraph 12 of IFRIC 23, Entity B reflects the effects of the uncertainty in determining taxable profit for year 1 using judgements and estimates that are consistent with those used to calculate the deferred tax liability. Entity B recognises and measures its current tax liability applying IAS 12 based on taxable profit that includes CU 90 (CU 100-CU 10). The amount of CU 90 is in addition to the amount of taxable profit included in its income tax filing. This is because Entity B deducted CU 100 in calculating taxable profit for Year 1, whereas the most likely amount of the deduction is CU 10.

31 IAS 1.29: An entity shall present separately each material class of similar items. An entity shall present separately items of a dissimilar nature or function unless they are immaterial.

32 IAS 1.54: The statement of financial position shall include line items that present the following amounts:

(a) property, plant and equipment;

(b) investment property;

(c) intangible assets;

(d) financial assets (excluding amounts shown under (e), (h) and (i));

(e) investments accounted for using the equity method;

(f) biological assets within the scope of IAS 41 Agriculture;

(g) inventories;

(h) trade and other receivables;

(i) cash and cash equivalents;

(j) the total of assets classified as held for sale and assets included in disposal groups classified as held for sale in accordance with IFRS 5 Non-current Assets Held for Sale and Discontinued Operations;

(k) trade and other payables;

(l) provisions;

(m) financial liabilities (excluding amounts shown under (k) and (l));

(n) liabilities and assets for current tax, as defined in IAS 12 Income Taxes;

(o) deferred tax liabilities and deferred tax assets, as defined in IAS 12;

(p) liabilities included in disposal groups classified as held for sale in accordance with IFRS 5;

(q) non-controlling interests, presented within equity; and

(r) issued capital and reserves attributable to owners of the parent.

33 IAS 1.57: This Standard does not prescribe the order or format in which an entity presents items. Paragraph 54 simply lists items that are sufficiently different in nature or function to warrant separate presentation in the statement of financial position. In addition:

(a) line items are included when the size, nature or function of an item or aggregation of similar items is such that separate presentation is relevant to an understanding of the entity's financial position; and

(b) the descriptions used and the ordering of items or aggregation of similar items may be amended according to the nature of the entity and its transactions, to provide information that is relevant to an understanding of the entity's financial position. For example, a financial institution may amend the above descriptions to provide information that is relevant to the operations of a financial institution.

34 IAS 1.58: An entity makes the judgement about whether to present additional items separately on the basis of an assessment of:

(a) the nature and liquidity of assets;

(b) the function of assets within the entity; and

(c) the amounts, nature and timing of liabilities.

35 IAS 12.5: The following terms are used in this Standard with the meanings specified:

Accounting profit is profit or loss for a period before deducting tax expense.

Taxable profit (tax loss) is the profit (loss) for a period, determined in accordance with the rules established by the taxation authorities, upon which income taxes are payable (recoverable).

Tax expense (tax income) is the aggregate amount included in the determination of profit or loss for the period in respect of current tax and deferred tax.

Current tax is the amount of income taxes payable (recoverable) in respect of the taxable profit (tax loss) for a period.

Deferred tax liabilities are the amounts of income taxes payable in future periods in respect of taxable temporary differences.

Deferred tax assets are the amounts of income taxes recoverable in future periods in respect of:

(a) deductible temporary differences;

(b) the carryforward of unused tax losses; and

(c) the carryforward of unused tax credits.

Temporary differences are differences between the carrying amount of an asset or liability in the statement of financial position and its tax base.

Temporary differences may be either:

(a) taxable temporary differences, which are temporary differences that will result in taxable amounts in determining taxable profit (tax loss) of future periods when the carrying amount of the asset or liability is recovered or settled; or

(b) deductible temporary differences, which are temporary differences that will result in amounts that are deductible in determining taxable profit (tax loss) of future periods when the carrying amount of the asset or liability is recovered or settled.

The tax base of an asset or liability is the amount attributed to that asset or liability for tax purposes.

36 IAS 37.5: When another Standard deals with a specific type of provision, contingent liability or contingent asset, an entity applies that Standard instead of this Standard. For example, some types of provisions are addressed in Standards on:

(a) [deleted]

(b) income taxes (see IAS 12 Income Taxes);

(c) leases (see IFRS 16 Leases). However, this Standard applies to any lease that becomes onerous before the commencement date of the lease as defined in IFRS 16. This Standard also applies to short-term leases and leases for which the underlying asset is of low value accounted for in accordance with paragraph 6 of IFRS 16 and that have become onerous;

(d) employee benefits (see IAS 19 Employee Benefits);

(e) insurance contracts and other contracts within the scope of IFRS 17 Insurance Contracts;

(f) contingent consideration of an acquirer in a business combination (see IFRS 3 Business Combinations); and

(g) revenue from contracts with customers (see IFRS 15 Revenue from Contracts with Customers). However, as IFRS 15 contains no specific requirements to address contracts with customers that are, or have become, onerous, this Standard applies to such cases.